

or is used in place of the word and, found in this section; so as, in effect, to declare, that where the acquisition could not be made because of the refusal of the owner, or because of his absence, or because of his inability to contract, that then the body politic might condemn, &c.; and such a turn of expression, it may be admitted, does much more perspicuously express, what is obviously the intention of the Legislature, by all such enactments, than in this instance. But the expressions used in this Act do, with sufficient clearness, convey the same intention. The fair

**449** sense of the section under \*consideration is, that, in all cases, where the assent of the owner cannot be had, as in the case of his withholding it; and of his not being present to give it; and also of his not having a mental capacity to contract, the body politic may condemn; that is, in each one, and in all those cases he may condemn; but in the other similar-enactments, where the disjunctive turn of expression is used, it is in substance declared, that in either, or in any one of those cases the acquisition may be made by condemnation. The necessary and obvious meaning of both forms of expression is, however, entirely the same; hence there is no foundation for this objection.

The plaintiffs in the next place rest their equity to have the defendants enjoined, upon the ground, that their property is held, as a part of their franchise, under a contract with the State, which the General Assembly can by no subsequent enactment impair. Among the other restrictions imposed upon the powers of the State governments, by the tenth section of the first Article of the Constitution of the United States, it is declared, that no State shall pass any law impairing the obligation of contracts.

It is not my intention, upon this occasion, to enter upon an enquiry as to what was the cause of this restriction, or to express any opinion as to its true sense and bearing. But, taking it for granted, as it seems to have been in the argument, that this restriction may be enforced against the States by one of the branches of the Federal Government, according to the full extent of the jurisdiction assumed by the Supreme Court of the United States; and it may be admitted, that an Act of the Legislature of a State, granting permission to individuals to take upon themselves the franchise of a body politic, when accepted by them, is a contract, within the meaning of this restriction; yet after all this shall have been granted in its fullest latitude, the question returns; does the taking of the plaintiffs' land, in the manner proposed, in the smallest degree impair the obligation of the contract between them and the State?

The legislative department of this State Government, by its Act of incorporation, or contract, if it must be so considered, gave to the plaintiffs nothing more than a license to purchase and hold lands, and to do certain other acts as a body politic. The acqui-